Supreme Court, U.S.
FILED

05-72[illegible]

OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

Thomas Eric Brother, Jr.,
Petitioner,

v.

The State of Texas,
Respondent.

On Petition for Writ of Certiorari
To The Court Of Criminal Appeals of Texas

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Under the Fourth Amendment to the United States Constitution, this case presents an issue of technological first impression - the sufficiency of a citizen's "bare bones" cell phone call to establish probable cause to stop and arrest for driving while intoxicated. In this case a citizen placed a cell phone call, while driving her car, to a local police dispatcher describing her view of a possibly intoxicated driver. The dispatcher radioed a patrol officer with no more facts than a citizen was following a possible DWI driver. The dispatcher described the citizen's car. The patrol officer saw no independent facts to support a traffic stop as he approached Petitioner's vehicle. Thus, the issue of the sufficiency of the facts transmitted to the officer and the independent corroboration of an informant's cell phone call necessary to establish probable cause for an arrest, in the context DWI traffic stop as it exists in this case, have not yet been addressed by this Court in this age of universal communication by cellular telephone.

OPINIONS BELOW

The opinion of the Court of Criminal Appeals of Texas, which was scheduled to be published, appears in the Appendix as Brother. State, 166 S.W.3d 255 (Tex.Cr.App.-2005). Also included in the Appendix is a copy of the order of the Second Court of Appeals of Texas in Brother v. State, 85 S.W.3d 377 (Tex.App.--Fort Worth 2002).

GROUNDS FOR JURISDICTION

Because the Texas Court of Criminal Appeals affirmed Petitioner's conviction, the Court of Criminal Appeals' opinion is the opinion by a state court of last resort. Petitioner seeks review under Rule 10.1(c). This Court's jurisdiction is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amend IV, in pertinent part:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated.

STATEMENT OF THE CASE

On October 20, 2000, the district attorney of Tarrant County, Texas, filed a misdemeanor information charging Petitioner with the offense of driving while intoxicated (DWI).[1] CR 1.[2] Petitioner filed a

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[1] Tex. Penal Code, Section 42.04.

[2] References to the clerk's record are notated as CR. References to the

pretrial motion to suppress evidence obtained by the arresting officer. CR 5-11. The trial court called the case for a pretrial hearing on March 9, 2001. CR 31, RR Vol.2 1. After hearing evidence, the court denied Petitioner's motion to suppress the evidence. CR 31; RR Vol.2 77. On April 27, 2001, Petitioner pleaded guilty under a plea bargain agreement subject to an appeal of the motion to suppress. CR 26. The court sentenced Petitioner to a fine of $550, and 90 days in jail probated for two years, and costs of $191.25. CR 26-8.

In this case the state tried Petitioner for driving while intoxicated. Before trial, Petitioner filed his Motion to Suppress. CR 5-11. Defense counsel asserted the motion during a pretrial hearing on March 9, 2001. CR 31, RR Vol.2 1. The trial judge denied the motion at the close of the hearing. CR 31; RR Vol.2 77. The court also signed a written order denying Petitioner' motion to suppress. CR 46. Petitioner pleaded guilty under a plea bargain agreement subject to an appeal of the motion to suppress. CR 26.

For purposes of this petition, Petitioner offers a short summary of the facts surrounding Petitioner's arrest.

Debbie Spencer, a private citizen, was driving home on Highway 121 and the Airport Freeway (Highway 183) from her workplace at the D-FW airport on the night of October 19, 2000. Spencer saw the headlights of a car approaching from the rear. Spencer changed lanes to the left lane to allow the car to pass. The car passed, and Spencer moved back to right lane. The car, a green Saturn, slowed down as it passed. Spencer pulled in behind and followed the Saturn at about 60 miles per hour. Spencer first noticed the Saturn in the City of Grapevine. RR Vol.2 7-11.

Spencer described the Saturn's speed as "erratic". Spencer

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reporter's record are abbreviated as RR.

passed the Saturn and left it behind. Spencer and her passengers discussed the Saturn. Spencer decided to slow down and let the Saturn catch up and pass her. After the Saturn passed her a second time, Spencer called 911 on her cell phone. RR Vol.2 11.

Spencer testified that the Saturn made several lane changes - from one side of the freeway to the other. Spencer was in constant contact with a 911 dispatcher. RR Vol.2 13. The dispatcher instructed Spencer to turn on her emergency flashers as Spencer passed the Chili's restaurant on Highway 820 West. RR Vol.2 34. Spencer continued to follow the Saturn until the 911 dispatcher told her to pull back. Spencer pulled over to the side of the highway and spoke with a police officer. The officer obtained names and address from Spencer and her passengers and released them to go on their way. RR Vol.2 13, 34-7.

When Spencer stopped to talk with the officer, she was in the City of North Richland Hills. RR Vol.2 33.

On cross-examination, Spencer agreed that the Saturn was driving at a normal speed limit. RR Vol.2 21-2. The Saturn was not speeding or weaving when it first passed Spencer. RR Vol.2 22. The Saturn's speed varied between 50 and 60 miles per hour because of traffic. RR Vol.2 24. Spencer agreed that there was a lot of construction and construction barricades in the area where the Saturn was seen to change lanes, the Highway 121 - 820 merge . RR Vol.2 28-32. Spencer testified that the Saturn pulled over immediately when the police officer passed her car. Spencer stopped three car lengths behind the police patrol car. RR Vol.2 37-8.

Officer J.D. Williams of the City of Hurst police department, testified that: "Dispatch advised me a caller was on 911 from a cell phone, and was following what they thought could be an intoxicated driver on 121." RR Vol.2 42. Williams was westbound on Highway 121. He increased his speed a little and saw a Tahoe (Spencer's car)

and a smaller car in front. Williams saw the two vehicles as Spencer activated her emergency flasher. Williams testified that he was outside the city limits of Hurst when he saw the vehicles ahead. RR Vol.2 43-4.

Williams caught the Tahoe and followed for a few moments. He confirmed that the Saturn was the correct car by checking the license plate. Williams passed the Tahoe and stopped the Saturn. RR Vol.2 44.

Williams saw no erratic driving by the Saturn. The Saturn's speed was about 40 mph. RR Vol.2 45. Williams stated that the speed limit was 45 mph because of construction. RR Vol.2 46. Williams identified Petitioner as the driver of the Saturn. RR Vol.46-7.

Williams testified that he stopped the Saturn in North Richland Hills and that he did not activate his patrol car lights until he was in North Richland Hills. RR Vol.2 47, 50. Williams stated that he saw the Saturn "just barely in our city." RR Vol.2 47.

Williams stated that he never contacted North Richland Hills authorities before or after stopping Petitioner's vehicle. RR Vol.2 48.

On cross-examination, Williams stated that Spencer could have been on the Hurst - North Richland Hills border line when she activated her emergency flashers. RR Vol.2 53-4. In fact, Williams placed the Chili's restaurant in North Richland Hills. RR Vol.2 54. Williams stated that as Spencer activated her flashers at the Chili's restaurant she was in North Richland Hills. RR Vol.4 54.

Williams saw Spencer's Tahoe and the Saturn only four or five seconds before Spencer activated her flashers. RR Vol.2 54-5.

Williams saw no erratic driving. Williams did not see the Saturn weave. Williams saw no speeding. RR Vol.2 56.

Williams questioned Petitioner at the street side, performed field sobriety tests, video taped Petitioner at the street side, and placed Petitioner in custody. RR Vol.2 57-61.

Williams took Petitioner to the Hurst city jail where he obtained additional evidence. Petitioner remained in the Hurst jail overnight. RR Vol.2 63.

REASONS FOR GRANTING THE WRIT

THE COURT OF CRIMINAL APPEALS OF TEXAS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL CONSTITUTIONAL LAW THAT SHOULD BE SETTLED BY THIS COURT AND HAS DECIDED A FEDERAL QUESTION OF CONSTITUTIONAL LAW IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS BY THIS COURT.

This case presents an issue of technological first impression - the sufficiency of a citizen's cell phone call to establish probable cause to arrest. The issue of corroboration of an informant's cell phone call, in the context DWI traffic stop, has not yet been addressed by this Court.

Because Officer Williams arrested Petitioner outside William's city of jurisdiction, the Court of Criminal Appeals was required under Texas statutes to find that William's possessed probable cause to arrest for DWI before Williams stopped Petitioner's vehicle, as a matter of law.

The Court of Criminal specifically held that William's had probable cause to arrest at the inception of the traffic stop:

[Petitione[illegible] as stopped outside the officer's jurisdiction based on the officer's probable cause that DWI was underway, and the officer so testified.

See Brother v. State, page 9, Appendix A.

It is undisputed that the police dispatched failed to communicate Petitioner's specific driving conduct to Williams before he stopped Petitioner's car.

In this case, Officer Williams was provided no description of Petitioner's actual driving. The 911 dispatcher gave Williams no facts to indicate Spencer's credibility. Williams did not observe anything in Appellant's driving that could objectively be considered criminal conduct. Williams had nothing but the bare facts in the 911 broadcast. Such bare facts: "Dispatch advised me a caller was on 911 from a cell phone, and was following what they thought could be an intoxicated driver on 121" cannot have created probable cause to stop Petitioner's car. Williams had no additional corroborative facts, Williams saw no erratic driving. Williams did not see the Saturn weave. Williams saw no speeding. RR Vol.2 56.

It is well established by this Court that a police broadcast, standing alone, is insufficient to establish probable cause. An officer must have additional corroborative facts within the officer's knowledge, beyond the police broadcast, to give rise to probable cause to arrest. Thus, the Texas Court of Criminal Appeals decided this case in conflict with the established Fourth Amendment jurisprudence of this Court. See *Illinois v. Gates*, 462 U.S. 213 (1983); *Draper v. United States*, 358 U.S. 307 (1959); *Alabama v. White*, 496 U.S. 325 (1990).

If this published opinion is allowed to stand, all that will be necessary in Texas to stop a citizen's car and arrest for DWI is a cell phone call and a police dispatch containing no driving facts.

CONCLUSION

For the reasons outlined above, it is respectfully submitted that this Petition for certiorari review be granted.

Respectfully submitted,

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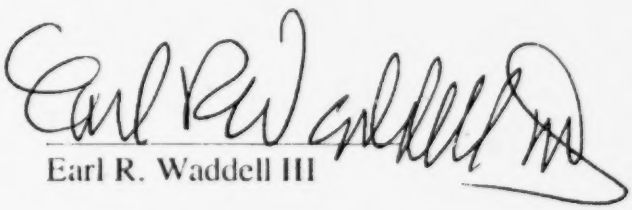
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on Mr. Tim Curry, District Attorney for Tarrant County, 401 West Belknap, Fort Worth, Texas 76102 and upon the State Prosecuting Attorney, P.O. Box 12405, Austin, Texas 78711 in accordance with the Texas Rules of Civil Procedure and the Texas Rules of Appellate Procedure on this 1st day of December, 2005.



Earl R. Waddell III

APPENDIX A

THE COURT OF CRIMINAL APPEALS' OPINION

13.

Thomas Eric Brother, Jr.
v.

The State of Texas

NO. PD-1820-02

COURT OF CRIMINAL APPEALS OF TEXAS

166 S.W.3d 255; 2005 Tex. Crim. App. LEXIS 983

June 29, 2005, Delivered

OPINION: Appellant was charged with driving while intoxicated by misdemeanor information. He filed a pre-trial motion to suppress evidence, claiming, inter alia, that (1) the officer did not have reasonable suspicion to stop his vehicle for DWI and (2) the stop was prohibited by Article 14.03 of the Texas Code of Criminal Procedure. After a hearing, the trial court denied appellant's motion to suppress. Appellant pleaded guilty to the offense but appealed the trial court's denial of his motion to suppress. The court of appeals affirmed the trial court's ruling. Brother v. State, 85 S.W.3d 377, 385 (Tex. App.--Fort Worth 2002). We granted review to determine whether the court of appeals erred in affirming the trial court's implicit conclusion that the officer had reasonable suspicion to stop appellant's car and that the officer had statutory authority to make the stop outside his geographical jurisdiction, the City of Hurst. We affirm the judgment of the court of appeals.

ANALYSIS AND HOLDINGS

12. Fourth Amendment

Based on the following facts, the court of appeals concluded that the arresting officer had reasonable suspicion to stop appellant's car. Appellant's erratic driving was reported by a citizen who called "911" on her cell phone after she witnessed appellant speeding, tailgating, and weaving across several lanes of traffic. The citizen, who continued to monitor appellant's driving by following appellant in her car, kept in contact with the "911" dispatcher until the arresting officer stopped appellant. The citizen testified at the suppression hearing that the dispatcher instructed her to follow appellant and activate her hazard lights so that the responding officer would be able to identify the correct vehicle. The citizen remained at the scene after the stop, and she provided the officer with her contact information. The court of appeals concluded that, although the officer did not witness the erratic driving, the detailed information he received from the "911" dispatcher was sufficient to warrant the traffic stop. *Brother v. State*, 85 S.W.3d at 381-82.

The crux of appellant's complaint is that the officer did not personally observe any activity that would give rise to a reasonable suspicion that DWI was afoot. However, the record reflects that the officer received facts of appellant's erratic driving from the dispatcher before he stopped appellant's car. Specifically, the officer testified at the suppression hearing that "dispatch advised me a caller was on 911 from a cell phone, and was following what [she] thought could be an intoxicated driver . . . . Dispatch stayed on the line with the caller and was updating me as the call progressed . . . . From what dispatch was describing, it sounded like a possible intoxicated driver." The officer further testified that he knew which car to stop because the dispatcher had provided him with the license plate number and that the citizen had been instructed to follow behind appellant's car with her hazard lights on. Thus, based on this testimony and the following analysis, we hold that the officer was

apprised of sufficient facts by which to conclude that criminal activity, i.e., DWI, was afoot.[1]

Under the Fourth Amendment, a temporary detention is justified when the detaining officer has specific articulable facts which, taken together with rational inferences from those facts, lead the officer to conclude that the person detained is, has been, or soon will be engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 30, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968). These facts must amount to more than a mere hunch or suspicion. *Davis v. State*, 947 S.W.2d 240, 244 (Tex. Crim. App. 1997).

The factual basis for stopping a vehicle need not arise from the officer's personal observation, but may be supplied by information acquired from another person. *Adams v. Williams*, 407 U.S. 143, 147, 32 L. Ed. 2d 612, 92 S. Ct. 1921 (1972). For example, in *Armendariz v. State*, we held that a stop based on facts observed by an undercover officer and transmitted by radio to a deputy sheriff did not violate the Fourth Amendment. 123 S.W.3d 401, 404 (Tex. Crim. App. 2003), cert. denied, 541 U.S. 974 (2004).

It has been widely recognized that the reliability of a citizen-informant is generally shown by the very nature of the circumstances under which the incriminating information became known to him or her. *State v. Markus*, 478 N.W.2d 405 (Iowa Ct. App 1991).[2]

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[1] Appellant seems to argue that the stop was unlawful because, although the dispatcher may have received specific facts from the citizen, the officer did not receive any facts from the dispatcher that would provide a legitimate basis for the stop. Specifically, appellant complains that, "there was no specific conduct communicated to [the officer] before he stopped Appellant's car" and "The court of appeals erroneously cites the facts known to the police dispatcher and not facts known by or communicated to [the officer]." Although there was no testimony at the suppression hearing that the dispatcher relayed any specific facts about appellant's driving to the officer, the audiotape of the call from the dispatcher to the officer was admitted into evidence and played in open court. We have reviewed the tape and find that the dispatcher relayed specific facts about appellant's driving to the officer. Moreover, the detail of the dispatcher's information leads us to conclude that, not only did the officer have reasonable suspicion to stop appellant's car, the officer had probable cause to make the arrest for DWI.

[2] See also, Chambers v. Maroney, 399 U.S. 42, 46-47, 26 L. Ed. 2d 419, 90 S. Ct. 1975 (1970); Jaben v. United States, 381 U.S. 214, 224, 14 L. Ed. 2d 345, 85 S. Ct. 1365, 1965-2 C.B. 446 (1965); Webb v. State, 760 S.W.2d 263, 274-75 (Tex. Crim. App. 1988) (holding

In *Pipkin v. State*, the Fort Worth court of appeals held that a stop based on facts relayed to law enforcement by a citizen cell phone caller were sufficiently corroborated and the stop was justified, even though the officer did not personally witness any erratic driving. 114 S.W.3d 649, 654 (Tex. App.--Fort Worth 2003, no pet.). The citizen-witness testified that he called "911" because Pipkin was driving thirty miles per hour under the posted speed limit; and as the caller drove by Pipkin's car, the caller saw Pipkin smoking a crack pipe. The Fort Worth Court concluded that the stop was reasonable because the caller was a disinterested private citizen who provided law enforcement with a detailed description of Pipkin's car and location and made himself accountable for his intervention by providing his contact information to the dispatcher. Id. at 655-56. Looking to its own precedent, the Fort Worth court held that the facts relayed to the dispatcher, which detailed Pipkin's driving and described his criminal behavior, in addition to the description and location of the vehicle, provided adequate corroboration for the officer to have reasonably concluded that the information given to him was reliable and a temporary detention was justified. See id. at 655-56.[3]

Here, the citizen gave a detailed description of appellant's car and location, as well as his erratic driving. As requested by the "911" dispatcher, the citizen followed behind the suspect with her emergency lights on, which assisted the officer in identifying the proper vehicle. Throughout the incident, the citizen kept in contact

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that information from citizen-witness was sufficiently reliable under totality of the circumstances, even though officer did not obtain witness's name); United States v. Sierra-Hernandez, 581 F.2d 760, 763 & n.1 (9th Cir. 1978) (although information supplied by citizen informant is not per se reliable, such information should be given serious attention and great weight); State v. Paszek, 50 Wis. 2d 619, 184 N.W.2d 836, 842-43 (1971) (distinguishing paid informants from ordinary citizen informants). See 2 LAFAVE, SEARCH AND SEIZURE, @ 3.4 (3 ed 1996).

[3] Citing State v. Stolte 991 S.W.2d 336, 341 (Tex. App.--Fort Worth 1999, no pet). In Stolte, detailed information from an unidentified citizen cell phone caller, alleging erratic driving and identifying the suspect's car and location, was relayed to the arresting officer by police dispatch. The Fort Worth court reasoned that, in addition to the detailed information provided, the tip bore sufficient indicia of reliability because the witness was a concerned citizen rather than a paid government informant, and the caller permitted himself to be identified after the stop. See id. at 340-43.

with the "911" dispatcher, and she remained at the scene after appellant's car was stopped by police. There, she provided police with her contact information. She later appeared as a witness at the suppression hearing, and she testified about her firsthand observations. Relying on the information supplied by the citizen, the officer testified he was able to locate and identify appellant's vehicle. And, as noted, the officer testified that the facts relayed to him through the "911" dispatcher caused him to believe that appellant was driving while intoxicated.

Appellant's argument that an officer must personally witness facts giving rise to criminal activity, is against the great weight of authority.[4] The federal courts and our lower Texas courts have

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[4] United States v. Wheat, 278 F.3d 722, 724 (8th Cir. 2001), cert. denied, 537 U.S. 850, 154 L. Ed. 2d 81 (2002); Bilyeu v. State, 136 S.W.3d 691, 696-97 (Tex. App.--Texarkana 2004); Reesing v. State, 140 S.W.3d 732, 737 (Tex. App.--Austin 2004, pet. ref'd); Hawes v. State, 125 S.W.3d 535, 538-540 (Tex. App.--Houston [1st Dist.] 2002, no pet.) (stop upheld where unidentified citizen tipster, who approached officer on street but was never identified, saw driver asleep at wheel of car at green light; tip was then corroborated by the slow operation of the car); State v. Fudge, 42 S.W.3d 226, 232 (Tex. App.--Austin 2001, no pet.) (holding reasonable suspicion existed to support detention based solely on cab driver's unsolicited personal report to officer about erratic driving); State v. Garcia, 25 S.W.3d 908, 913-14 (Tex. App.--Houston [14th Dist.] 2000, no pet.) (holding that reliability of the informant's tip, combined with the officer's subsequent corroboration of details, provided reasonable suspicion for investigative detention); Hime v. State, 998 S.W.2d 893, 895-96 (Tex. App.--Houston [14th Dist.] 1999, pet. ref'd) (stop for DWI investigation was reasonable based on tip from eyewitness who provided name to police); Glover v. State, 870 S.W.2d 198, 199-200 (Tex. App.--Fort Worth 1994, pet. ref'd) (upholding stop based solely on facts supplied by unidentified EMS personnel); Stolte, 991 S.W.2d at 341; Sailo, 910 S.W.2d at 188. Cf. Johnson v. State, 146 S.W.3d 719 (Tex. App.--Texarkana 2004, no pet.) (holding that stop based solely on anonymous tip with no corroboration by the officer that indicated criminal activity was underway was insufficient, even where the officer testified that the stop took place in high crime area); Davis v. State, 989 S.W.2d 859 (Tex. App.--Austin 1999, pet. ref'd) (holding specific facts relating to description of suspects, the vehicle and its whereabouts, were insufficient where allegation of unknown telephone caller included reckless driving and "possible" possession of marijuana); Stewart v. State, 22 S.W.3d 646 (Tex. App.--Austin 2000, pet. ref'd) (holding that stop unjustified on basis of telephone caller, who was never identified, alleging that driver of green Camero, in convenience store parking lot, fell over before getting into his car). See also, Note, Search and Seizure: Law Enforcement Officers' Ability to Conduct Investigative

consistently held that a stop based on facts supplied by a citizen-eyewitness, which are adequately corroborated by the arresting officer,[5] do not run afoul of the Fourth Amendment.

Moreover, appellant's argument is simply unsound. To require officers who are apprised of detailed facts from citizen-eyewitnesses to observe suspects and wait until additional suspicious acts are committed, would be foolish and contrary to the balance of interests struck in Terry and its progeny. See Terry, 392 U.S. at 29 ("The sole justification of the search . . . is the protection of the police officer and others nearby. . . .").[6] Accordingly, we hold that the court of appeals did not err in concluding that, under the totality o of the circumstances, the stop was reasonable under the Fourth Amendment. See *Alabama v. White*, 496 U.S. at 331; Pipkin, 114 S.W.3d at 654.

II. Article 14.03(g)

Traffic Stops Based Upon An Anonymous Tip Alleging Dangerous Driving When the Officers Do Not Personally Observe Any Traffic Violations, 34 U. MEM. L. REV. 173 (2003).

[5] Corroboration does not mean that the officer must personally observe the conduct that causes him to reasonably suspect that a crime is being, has been, or is about to be committed. Adams v. Williams, 407 U.S. at 147; Pipkin, 114 S.W.3d at 654. Rather, corroboration refers to whether the police officer, in light of the circumstances, confirms enough facts to reasonably conclude that the information given to him is reliable and a temporary detention is thus justified. Alabama v. White, 496 U.S. 325, 330-31, 110 L. Ed. 2d 301, 110 S. Ct. 2412 (1990); Pipkin, 114 S.W.3d at 654.

[6] See Adams v. Williams, 407 U.S. 143, 145-46, 32 L. Ed. 2d 612, 92 S. Ct. 1921 (1972) (the Fourth Amendment does not require police officers "to simply shrug [their] shoulders and allow a crime to occur or a criminal to escape"); Terry, 392 U.S. at 20-21, 27 (balancing the government's interest against the degree of intrusion upon individual rights and concluding that the government's interest in crime prevention and detection outweighed the limited intrusion of a brief investigative stop upon an individual's personal liberty); Stolte, 991 S.W.2d at 342 & 343 n.4 ("it would be wholly unreasonable, under these facts, to require a police officer to 'corroborate' an informant's tip by waiting for the suspect to swerve out of his lane or otherwise jeopardize the safety of other drivers"); Slater, 986 P.2d at 1050 (when balancing private and public rights in DWI prosecution, "the equation must be weighed in favor of protecting the public and removing the danger").

Article 14.03 of the Texas Code of Criminal Procedure provides that city police officers may not stop and arrest persons for traffic violations committed outside the officers' geographical jurisdiction. TEX. CODE CRIM. PROC. ANN. art. 14.03(g); *State v. Kurtz*, 152 S.W.3d 72, 77 (Tex. Crim. App. 2004). Appellant was stopped outside the City of Hurst but within Tarrant County. The arresting officer was a licensed peace officer of the City of Hurst. See art. 14.03(g) (defining officers who may and may not stop persons for traffic offenses committed within their view but outside their jurisdiction).

Construing Article 14.03 and the applicable common law decisions, the court of appeals held that the stop was not prohibited because "a city officer's geographical jurisdiction is county-wide." See Brother v. State, 85 S.W.3d at 384-85. Although the court of appeals reached the right result, the focus of its conclusion was misdirected. That is, it was not necessary for the court of appeals to determine whether the officer had jurisdiction to stop appellant for mere traffic offenses, because subsection (g) provides that an officer outside his jurisdiction may stop a person who is driving while intoxicated. See Art. 14.03 (g) ("A peace officer...who is licensed under the Government Code, and is outside of [his] jurisdiction may arrest without a warrant a person who commits any offense within the officer's presence or view, except that an officer outside the officer's jurisdiction may arrest a person for a violation of [the Transportation Code] only if [he is a Ranger or a DPS officer].") (emphasis added).

Appellant was stopped outside the arresting officer's jurisdiction based on the officer's probable cause that DWI was underway, and the officer so testified. The officer was resolute that the caller had provided facts which led him to believe that DWI--not traffic offenses--was afoot. Therefore, Article 14.03(g) did not prohibit the stop outside the officer's jurisdiction. See Kurtz , 152 S.W.3d at 79.

III. Article 14.03(d)

Moreover, Article 14.03(d) further authorized the stop. Subsection (d) provides that an officer may make an extra-jurisdictional stop for felony offenses, disorderly conduct offenses under Chapter 42, intoxication offenses under Chapter 49, and breaches of the peace that are committed within the officer's view. See Art. 14.03(d). Based on the officer's testimony here, the trial court could have reasonably found that an intoxication offense was taking place. Therefore, the stop was authorized by both subsections (d) and (g). Compare *State v. Kurtz*, 152 S.W.3d at 78-79 (extra-jurisdictional stop based on only traffic offenses could not be upheld as stop based on breach of the peace because record facts did not support such a stop).

IV. Conclusion

We affirm the judgment of the court of appeals.

DELIVERED: June 29, 2005.

APPENDIX B

THE SECOND COURT OF APPEALS' OPINION

23.

THOMAS ERIC BROTHER, JR. APPELLANT

v.

THE STATE OF TEXAS

NO. 2-01-193-CR

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

85 S.W.3d 377; 2002 Tex. App. LEXIS 5768

August 8, 2002, Delivered

OPINION: Thomas Eric Brother, Jr. appeals from his conviction for driving while intoxicated (DWI). In four points on appeal, appellant complains that the trial court erred by denying his motion to suppress because the arresting officer had no authority to make a Terry[1] stop to investigate whether appellant was driving while intoxicated, no authority to make a warrantless arrest, and no authority to stop or arrest appellant outside the City of Hurst. We affirm.

Background Facts

Around midnight on October 19, 2000, Debbie Spencer was driving herself and four coworkers home from their work at American Airlines. As they traveled, a green Saturn came up behind Spencer's truck so fast that she had to move to the left lane to allow the Saturn to pass. Spencer testified that the Saturn was "on top of [her] truck," bumper to bumper, and too close. She and her companions discussed its odd driving.

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[1] Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889, 44 Ohio Op. 2d 383 (1968).

After the Saturn passed, Spencer returned to the right-hand lane, behind the Saturn. Then she noticed that there was another car ahead of the Saturn, which did not move out of the Saturn's way. The Saturn also ran up on the other car's bumper and then slowed down to about fifty miles per hour rather quickly, forcing Spencer to also slow down. Spencer then passed the Saturn, intending to leave it behind. But after she and her coworkers discussed what they had observed, Spencer decided to slow down and watch the Saturn because she was uncomfortable with the way it was being driven.

Once again, the Saturn passed Spencer's truck. As Spencer continued to watch the Saturn, she noticed that it was weaving, first in and out of a single lane, then further and further out until it eventually cut across all three lanes of traffic. At this point, Spencer called 911. On the 911 tape, Spencer informed the operator that appellant's vehicle was "all over the road." Spencer explained that she saw appellant make various lane changes going from the far right-hand lane of the three-lane road all the way over to the shoulder on the other side and then return to the right-hand lane. Appellant never used his turn signal, even though other cars were in the vicinity.

The 911 dispatcher contacted Hurst police officer J.D. Williams, a sixteen-year veteran, and told him that a driver calling on a cell phone was following what she thought could be an intoxicated driver on Highway 121. Based on the information that the dispatcher provided, Williams concluded that "it sounded like a possible intoxicated driver." Spencer stayed in constant contact with the dispatcher, and the dispatcher updated Williams with the information that Spencer provided as the call progressed. Spencer also gave the dispatcher the license plate number of the Saturn, which the dispatcher conveyed to Williams.

The dispatcher told Spencer to turn on her emergency flashers so that the police could find her easily. Williams saw the flashers on Spencer's truck pretty quickly, just after he had spotted the Saturn. Williams pulled in between Spencer's truck and the Saturn, followed the Saturn briefly, verified its driver's license plate

number, and then turned on his overhead lights. Williams did not see appellant speeding or driving erratically. After Williams activated his overhead lights, appellant pulled over and stopped very slowly, as if he "let off the gas and then coasted to a stop" from about 40 miles per hour.

Williams approached the Saturn and noticed that appellant, the driver, was slow in his movements. Appellant fumbled through several cards before ultimately finding his driver's license. His eyes were a little glassy, his speech was a little slurred, and he smelled of alcohol. Williams gave appellant several field sobriety tests, decided that appellant was intoxicated, and arrested him for DWI.

As Williams was making the stop, the dispatcher told Spencer to stay back. Spencer pulled over to the side of the road behind the patrol car, the dispatcher told her to wait, and Spencer ultimately spoke with an officer after appellant was pulled over. The officer took the names and driver's license information of Spencer and her passengers and told them that they would be contacted.

Standard of Review

Where, as here, the facts related to a trial court's ruling on a motion to suppress are undisputed, we conduct a de novo review of the ruling. See *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000)(stating that appellate court reviews de novo the trial court's application of the law of search and seizure to the facts of a case); *Bachick v. State*, 30 S.W.3d 549, 551 (Tex. App.--Fort Worth 2000, pet. ref'd) (same). We view the evidence in the light most favorable to the trial court's ruling, and we may not disturb supported findings of fact absent an abuse of discretion. *State v. Ballard*, 987 S.W.2d 889, 891 (Tex. Crim. App. 1999). Misapplication of the law to the facts of a case is a per se abuse of discretion. Id. at 893.

Terry Stop

Appellant sought to suppress all of Williams's testimony and the evidence he obtained after the stop of appellant's car. After a

hearing, the trial court found, based on the totality of the circumstances, that Williams "had the right to make the stop based on the information that was relayed to him." In his fourth point, appellant contends that the stop was unlawful because Williams had no reasonable suspicion to detain him.

A police officer may briefly detain a person for investigative purposes if, under the totality of the circumstances, the officer has reasonable suspicion supported by articulable facts that the person detained is, has been, or soon will be engaged in criminal activity. Terry, 392 U.S. at 21-22, 88 S. Ct. at 1880; *Woods v. State*, 956 S.W.2d 33, 35, 38 (Tex. Crim. App. 1997). Whether a detention is reasonable under the circumstances turns upon the content and reliability of the information possessed by the officer. *Alabama v. White*, 496 U.S. 325, 330, 110 S. Ct. 2412, 2416, 110 L. Ed. 2d 301 (1990); *State v. Sailo*, 910 S.W.2d 184, 188 (Tex. App.--Fort Worth 1995, pet. ref'd).

The information provoking an officer's suspicions need not be based on his own personal observations, but may be based on an informant's tip that bears sufficient indicia of reliability to justify an investigative detention. *Johnson v. State*, 32 S.W.3d 294, 297 (Tex. App.--San Antonio 2000, pet. ref'd). Where the reliability of the information is increased, less corroboration is necessary. *State v. Stolte*, 991 S.W.2d 336, 341 (Tex. App.--Fort Worth 1999, no pet.). A detailed description of the wrongdoing, along with a statement that the event was observed firsthand, entitles an informant's tip to greater weight. *Illinois v. Gates*, 462 U.S. 213, 234, 103 S. Ct. 2317, 2330, 76 L. Ed. 2d 527 (1983). A tip also deserves great weight if the person puts herself in a position to be held accountable for her intervention. Stolte, 991 S.W.2d at 341. Furthermore, a person who is not connected with law enforcement or is not a paid informant is considered inherently trustworthy when she advises the police that she suspects criminal activity has occurred or is occurring. Id.; Sailo, 910 S.W.2d at 188.

Appellant points out that Williams did not observe him weaving, speeding, or driving erratically and asserts that Williams

did not know any facts as a result of Spencer's 911 call that would have distinguished appellant from any other ordinary driver and thereby justified the stop. Appellant further contends that the 911 dispatcher did not give Williams any information that would indicate that Spencer's information was reliable.

Even though Williams did not personally observe appellant speeding or driving in an erratic manner, Williams did have sufficient information to warrant the investigative detention. Spencer specifically explained to the 911 dispatcher why she believed appellant might be driving while intoxicated. She also described appellant's car and gave the dispatcher his driver's license plate number. Based on this information, the dispatcher contacted Williams. The three stayed in constant contact until Williams pulled appellant over, and the dispatcher updated Williams with the information Spencer provided as the call progressed. Williams also corroborated Spencer's information by verifying appellant's driver's license plate number before initiating the stop. Viewing this evidence in the light most favorable to the trial court's ruling, we hold that the trial court properly applied the law in concluding, based on the totality of the circumstances, that the stop of appellant's vehicle was valid. See Stolte, 991 S.W.2d at 339, 342 (holding that police officer had reasonable suspicion to detain driver suspected of DWI, even though he did not observe erratic driving and dispatcher only advised officer that a cell phone caller had reported a suspected DWI; caller had given suspect's license plate number and a specific description of the vehicle, had continually updated dispatcher on the location of suspect's vehicle, and had pulled in behind patrol car after stop and waited to be contacted by an officer). We overrule appellant's fourth issue.

Initial Stop Not an Arrest

In his first point, appellant contends that Williams's initial traffic stop of appellant's car was an arrest because Williams immediately approached his car and appellant thus could not have reasonably believed he was free to leave. He asserts that Williams

did not have probable cause to arrest him at that point, so the "arrest," i.e., the stop, was an unlawful warrantless arrest.

A person is arrested when he has been actually placed under restraint or taken into custody. TEX. CODE CRIM. PROC. ANN. art. 15.22 (Vernon 1977). The initial stop of appellant was an investigative detention, not an arrest. A police officer can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity "may be afoot," even if the officer lacks probable cause. Terry, 392 U.S. at 30, 88 S. Ct. at 1884; Woods, 956 S.W.2d at 35. We have held that Williams's investigative detention of appellant was reasonable under the circumstances of this case; therefore, no probable cause was required for the initial stop.

The cases on which appellant relies to support his position that the stop was not simply an investigative detention are inapposite from his situation. Williams did not block appellant's car with a police car and order appellant from his vehicle at gunpoint, see *Amores v. State*, 816 S.W.2d 407, 410 (Tex. Crim. App. 1991), did not hand-cuff appellant and force him to lie on the ground, see *Burkes v. State*, 830 S.W.2d 922, 923 (Tex. Crim. App. 1991), or seize appellant by the throat. See *Guzman v. State*, 955 S.W.2d 85, 86 & n.2 (Tex. Crim. App. 1997). Williams did not, as appellant asserts, remove appellant from his vehicle. Instead, he asked appellant to step out. As part of a temporary detention, an officer may ask an individual to step out of his automobile. Bachick, 30 S.W.3d at 551.

There is also no record support for appellant's contention that he was hand-cuffed and placed in a patrol car immediately following the field sobriety tests. We have found no evidence that hand-cuffing occurred before appellant's arrest or that it occurred at all. Williams did not arrest appellant until after he observed appellant's glassy eyes and slow movements, smelled alcohol on appellant and in his car, and decided, based on appellant's performance of field sobriety tests, that appellant was intoxicated. Appellant does not contend that

Williams lacked probable cause to arrest him at that point. We overrule point one.

Williams's Official Jurisdiction

Williams was a Hurst police officer, but he stopped and arrested appellant in North Richland Hills. In his second and third points, Appellant contends that Williams's official jurisdiction was limited to the City of Hurst, that Williams had no authority to stop or arrest him outside of Williams's official jurisdiction, and that the stop and arrest in North Richland Hills were therefore invalid.

A police officer in a type A general-law municipality[2] like Hurst has the powers, rights, duties, and jurisdiction granted to a peace officer by the code of criminal procedure. TEX. LOC. GOV'T CODE ANN. @ 341.001(e) (Vernon 1999). The code of criminal procedure charges a peace officer with the duty to preserve the peace within his jurisdiction and to use all lawful means to effect this purpose. TEX. CODE CRIM. PROC. ANN. art. 2.13(a) (Vernon Supp. 2002). Except for some statutory exceptions related to arrests,[3] both the common and statutory law limit a peace officer's authority to his own geographic jurisdiction. See *Angel v. State*, 740 S.W.2d 727, 734 (Tex. Crim. App. 1987) (holding that jurisdiction is a restriction on the geographic scope of a city police officer's power, rights, and authority).

The code of criminal procedure does not define a peace officer's jurisdiction. Both the court of criminal appeals and many intermediate appellate courts have held, however, that the jurisdiction of a police officer from a type A municipality is county-

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[2] Appellant asserts that Hurst is a type A general-law municipality, and the State does not contest this assertion. Accordingly, for purposes of this opinion, we will assume that Hurst is a type A general-law municipality.

[3] See, e.g., TEX. CODE CRIM. PROC. ANN. art. 14.03(d), (g) (Vernon Supp. 2002) (providing that a peace officer who is outside his jurisdiction may arrest, without warrant, a person who commits certain offenses within the officer's presence or view).

wide. See *Chavez v. State*, 9 S.W.3d 817, 827 & n.5 (Tex. Crim. App. 2001) (Holland, J., dissenting); *Perkins v. State*, 812 S.W.2d 326, 327 (Tex. Crim. App. 1991); Angel, 740 S.W.2d at 736; *Reichaert v. State*, 830 S.W.2d 348, 351 (Tex. App.--San Antonio 1992, pet. ref'd); *Finley v. State*, 809 S.W.2d 909, 913 (Tex. App.--Houston [14th Dist.] 1991, pet. ref'd); *Britt v. State*, 768 S.W.2d 514, 515 (Tex. App.--Fort Worth 1989, no pet.); see also Op. Tex. Att'y Gen. No. LO-98-077 (1998); 40 GEORGE E. DIX & ROBERT O. DAWSON, TEXAS PRACTICE: CRIMINAL PRACTICE AND PROCEDURE @ 9.15 (2nd ed. 2001).

Many of these decisions were based on former revised civil statutes 998 and 999 and former sections 341.001(e) and 341.021(e) of the local government code, which provided that city police officers had the same jurisdiction as city marshals who, in turn, had the same jurisdiction as a sheriff.[4] Angel, 740 S.W.2d at 733; Reichaert, 830 S.W.2d at 351; Finley, 809 S.W.2d at 913; Britt, 768 S.W.2d at 515. A sheriff is "a conservator of the peace in his county." TEX. CODE CRIM. PROC. ANN. art. 2.17 (Vernon 1977). Thus, the courts concluded that a type A municipality police officer's jurisdiction was county-wide. Angel, 740 S.W.2d at 733, 736; Reichaert, 830 S.W.2d at 351; Finley, 809 S.W.2d at 913; Britt, 768 S.W.2d at 515.

The current versions of these statutes do not specifically equate a city police officer's jurisdiction with that of a sheriff. TEX. LOC. GOV'T CODE ANN. @@ 341.001(e), 341.021(e) (providing only that police officers and marshals of type A general-law municipalities have same jurisdiction granted peace officers by code of criminal procedure). Nonetheless, nothing in the current statutes limits the jurisdiction afforded city police officers to less than a county-wide area. Given the large body of case law holding that a city police officer's jurisdiction is county-wide, the legislature could

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[4] See Act of May 25, 1967, 60th Leg., R.S., ch. 523, @ 2-3, 1967 Tex. Gen. Laws 1171, 1171-72, amended by Act of May 1, 1987, 70th Leg., R.S., ch. 149, @ 1, 1987 Tex. Gen. Laws 707, 1136-37, amended by Act of May 28, 1995, 74th Leg., R.S., ch. 829, @ 2-3, 1995 Tex. Gen. Laws 4213, 4214 (current version at TEX. LOC. GOV'T CODE ANN. @ 341.001(e), 341.021(e) (Vernon 1999)).

certainly have chosen to limit that jurisdiction to a lesser geographical area if it had wanted to. See *Miller v. State*, 33 S.W.3d 257, 260 (Tex. Crim. App. 2000) (noting that, in construing a statute, it is presumed that the legislature is aware of case law affecting or relating to the statute).

We decline to follow our sister court's holding that a city police officer's jurisdiction is now restricted to city limits--the pre-statutory geographic jurisdictional area recognized under the common law--simply because the current version of the statutes no longer defines the geographical scope of a city police officer's jurisdiction. See *Gerron v. State*, 57 S.W.3d 568, 570-71 (Tex. App.--Waco 2001, no pet.); see also *Armendariz v. State*, 63 S.W.3d 572, 576 (Tex. App.--El Paso 2001, pet. granted) (holding, without analysis, that city police officer's jurisdiction did not extend beyond city limits); *Yeager v. State*, 23 S.W.3d 566, 570 (Tex. App.--Waco 2000, pet. granted) (holding that jurisdiction of a type B municipality police officer is controlled by common- law geographical limitation of city limits).[5] Nothing in the legislative history of the amendments to sections 341.001(e) and 341.021(e) indicates a legislative intent to limit city police officers' jurisdiction to a geographical area less than county-wide.[6] To the contrary, the House Research Organization bill analysis explained that the purpose of the legislation was to broaden city police officers' authority to make warrantless arrests. The object of the legislation was to amend article 14.03 of the code of criminal procedure to allow peace officers to preserve the peace within the

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[5] Our opinion in Bachick should not be construed as holding that a city police officer's geographical jurisdiction is limited to city limits. In that case, our focus was not on the extent of a police officer's jurisdiction, but on the exclusionary rule and on whether an officer who makes a valid traffic stop for one offense may investigate a second if, during the course of the stop, the officer develops a reasonable suspicion that the second offense has been committed. See 30 S.W.3d at 551-53.

[6] Ordinarily, we construe a statute according to its plain textual meaning without resort to extratextual sources. See Boykin v. State, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991). But where, as here, the statute is ambiguous, we resort to extratextual sources such as the object sought to be attained by the legislation, legislative history, and former statutory provisions. See State v. Medrano, 67 S.W.3d 892, 900 (Tex. Crim. App. 2002).

entire State of Texas, not just their jurisdictions, by allowing them to arrest, outside their jurisdictions and without warrant, persons who committed offenses within the officers' presence or view. See HOUSE RESEARCH ORGANIZATION, BILL ANALYSIS, Tex. H.B. 2614, 74th Leg., R.S. (1995); BILL FILE, Tex. H.B. 2614 (1995), available at http://www.capitol.state.tx.us/tlo/billnbr.htm. The corresponding amendments to sections 341.001(e) and 341.021(e) of the local government code were intended to give marshals and police officers the same power and jurisdiction as peace officers under the code of criminal procedure to make such warrantless arrests. See HOUSE RESEARCH ORGANIZATION, BILL ANALYSIS, Tex. H.B. 2614; BILL FILE, Tex. H.B. 2614.[7]

Given the object sought to be attained by the amendments to article 14.03 and sections 341.001(e) and 341.021(e), the legislative history, and the former statutory provisions, we hold that a type A municipality police officer's jurisdiction remains at least county-wide. Both Hurst and North Richland Hills are in Tarrant County. Thus, Williams's stop and arrest of appellant were within Williams's jurisdiction, and the trial court did not err by denying appellant's motion to suppress. We overrule appellant's second and third points and affirm the trial court's judgment.

SAM J. DAY
Justice

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[7] We are aware that the scope of a peace officer's jurisdiction must be found in a statute or is controlled by the common law. Angel, 740 S.W.2d at 732; Dominguez v. State, 924 S.W.2d 950, 954(Tex. App.--El Paso 1996, no pet.). Here, a significant body of common law has been developed holding that a city police officer's jurisdiction is county-wide. While this common law is based largely on the former versions of the statutes at issue, there is not, as we have discussed, any indication that the legislature intended the amendments to the statutes to abrogate this well-established case law. Accordingly, we conclude that Angel and its progeny remain valid. See Enos v. State, 889 S.W.2d 303, 305 (Tex. Crim. App. 1994) (holding that statute must not be interpreted as abrogating common-law principle unless such overruling is clearly indicated, either by express terms of statute or by necessary implication from language used).